

## LEASE AGREEMENT

**THIS LEASE AGREEMENT** is made this \_\_\_\_ day of March, 2018, by and between Riverfront, L.L.C., a Kansas limited liability company, and the City of Lawrence, Kansas, a municipal corporation.

### RECITALS

- A.** Riverfront, L.L.C., a Kansas limited liability company ("Lessor"), owns that structure, located at 1 Riverfront Plaza, Lawrence, Kansas, and consisting of approximately 111,143 square feet ("Structure").
- B.** The City of Lawrence, Kansas, a municipal corporation ("Lessee"), wishes to lease approximately 21,385 square feet on the west side of the third floor of the Structure ("Leased Space"), for the purpose of relocating certain City offices.
- C.** The Leased Space currently constitutes approximately 19.24% of the Structure.
- D.** Lessor agrees to lease to Lessee the Leased Space, subject to the terms and conditions of this Lease Agreement ("Lease").

**NOW, THEREFORE**, in light of the mutual promises and obligations contained herein, and in exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

### TERMS

- 1. Lease of Space.** Lessor hereby agrees that, in exchange for the payment of Rent and the giving of other good and valuable consideration, it will lease to Lessee the Leased Space, for the purpose of relocating certain City offices (a map showing the location and the dimensions of the Leased Space is affixed hereto as Exhibit A and is incorporated herein by reference).
- 2. Rent.**
  - (a)** In consideration for use of the Leased Space and other good and valuable consideration, Lessee agrees to pay to Lessor Rent, on a monthly basis, per "Contract Year" (meaning commencing at 12:00 a.m. on July 1 and ending at 11:59 p.m. on June 30 of the succeeding year) (however, *see* subsection (c), *infra*, governing the commencement of Rent payments in 2018), for a period of ten years, according to the following schedule:

Contract Year 1 (2018-19):	\$232,027.25 (\$19,335.60 monthly)
Contract Year 2 (2019-20):	\$243,575.15 (\$20,297.93 monthly)
Contract Year 3 (2020-21):	\$255,123.05 (\$21,260.25 monthly)
Contract Year 4 (2021-22):	\$266,457.10 (\$22,204.76 monthly)
Contract Year 5 (2022-23):	\$278,005.00 (\$23,167.08 monthly)
Contract Year 6 (2023-24):	\$283,565.10 (\$23,630.43 monthly)
Contract Year 7 (2024-25):	\$289,236.40 (\$24,103.03 monthly)
Contract Year 8 (2025-26):	\$295,021.13 (\$24,585.09 monthly)
Contract Year 9 (2026-27):	\$300,921.55 (\$25,076.80 monthly)
Contract Year 10 (2027-28):	\$306,939.98 (\$25,578.33 monthly)

**(b)** Rent shall be payable to Lessor in monthly installments, due and payable in advance without notice or demand, on the first day of each month during the Term of this Lease and according to the preceding schedule. Rent payments shall be made in the form and at the place designated by Lessor. Payments received after the 10th day of the month will be subject to a 3.0% late fee.

**(c)** Notwithstanding the foregoing, in order to allow Lessee to prepare the Leased Space for its intended uses, Lessee’s payment of Rent for Contract Year 1 shall commence the earlier of **(i)** October 1, 2018, or **(ii)** when Lessee has completed preparations and commences use of the Leased Space. If Lessee commences use of the Leased Space earlier than October 1, 2018, and commences use mid-month, then Lessee’s Rent for that first month shall be pro-rated from the date that Lessee commences use of the Leased Space to the end of that month.

**3. Term of the Lease.** The Lease shall commence **(a)** at 12:00 a.m. on July 1, 2018, or **(b)** when Lessee commences construction of alterations of the Leased Space, whichever occurs earlier (“Commencement Date”), and will expire at 11:59 p.m. on June 30, 2028 (“Term”), unless otherwise terminated earlier as provided herein.

**4. Termination of Existing Lease.** The existing lease (“Existing Lease”) between the parties, dated September 1, 2008, as amended, regarding space generally located on the east side of the first floor of the Structure, shall be terminated and rendered null and void as of the date that Lessee has completed preparations and its Department of Planning and Development Services commences use of the Leased Space. At that time, all terms of the Existing Lease shall expire and be null and void, except those terms of the Existing Lease that, by their express language, clearly and unambiguously survive the termination or expiration of the Existing Lease.

**5. Inspection.**

- (a) Upon at least 2 days' written notice to Lessor, prior to the Commencement Date of this Lease, Lessee shall have the right to walk through the Leased Space and, at its sole cost and expense, to inspect the roof, elevators, exterior walls, plumbing, HVAC system, pipes and conduits, and other systems located outside the Leased Space that serve the Leased Space to insure that the Leased Space is habitable and to insure that the systems serving the Leased Space are operable and meet the reasonable needs of the Lessee. If the Leased Space or any system serving the Leased Space is determined by Lessee to be deficient, Lessor shall have no obligation to repair the deficiency and Lessee shall have the option to terminate this Lease unilaterally and without penalty by giving written notice of termination to the Lessor prior to the Commencement Date.
- (b) If it accepts and occupies the Leased Space, then the City acknowledges that, at least as of the Commencement Date, it is satisfied with the condition of the Leased Space.
- (c) The City acknowledges that the Lessor has not made any representations regarding and does not warrant the condition of the Leased Space or any systems serving the Leased Space.

**6. Use of Leased Space.** The Leased Space shall be used by Lessee for City offices, municipal court, and attendant uses, and for no other purpose without the prior written consent of the Lessor, which consent shall not unreasonably be withheld.

**7. Remaining Equipment and Furniture.** The parties agree that, except for equipment and furniture in the public lobby and reception area of the Leased Space as shown on Exhibit A, Lessor shall remove all equipment and furniture in the Leased Space as of the Commencement Date.

**8. Taxes.**

- (a) Prorated for 2018 from the Commencement Date and for any partial year in which this Lease is terminated, and thereafter annually, Lessee shall pay its pro-rata share of the real estate property taxes assessed to Lessor for the Structure in the percentage that is obtained by dividing the square footage of the Leased Space by the square footage of the Structure. Within 20 days after the last day upon which any such taxes may be paid without penalty or interest, Lessee shall submit to Lessor proof that it has paid said taxes.

- (b) Lessee may, at its own cost and expense, with the written consent of Lessor, which consent may not unreasonably be withheld, contest the amount or validity of any assessment in any manner permitted by law in Lessor's name, provided Lessee does so with due diligence and without cost, liability, or expense to Lessor. Notwithstanding the foregoing, Lessee may pay the contested assessment in the manner and on the dates provided herein. Any refund, with respect to such taxes, obtained as a result of Lessee's actions, shall be the property of Lessee, but only to the extent that Lessee has paid such assessments.
- (c) Notwithstanding the foregoing, Lessee shall not be obligated or required to pay any franchise, corporate, capital levy, or capital stock tax of Lessor; nor any income tax upon the income or receipts of Lessor; nor shall Lessee be obligated or required to pay any other tax assessment, special assessment, charge or levy, imposed on Lessor.
- (d) Upon the termination of the Lease, for whatever reason, Lessor and Lessee shall adjust the real estate tax assessment so that Lessee will pay a *pro rata* share to the date of termination, but none thereafter.

9. **Utilities.** Lessee shall pay all bills for utilities furnished to the Leased Space during the Term of this Lease. Lessee agrees to install, at its sole cost and expense, a sub-meter to measure water usage of the Leased Space.

10. **Alterations and Maintenance.**

- (a) Except as specifically otherwise provided herein, Lessee shall have the right, at its sole cost and expense, to alter the Leased Space to suit its needs; however, any alteration costing more than \$25,000.00 shall require the prior written consent of Lessor, which consent shall not unreasonably be withheld. Likewise, except as otherwise provided herein, Lessee shall, at its sole expense, maintain and repair the Leased Space as would be required for the ordinary use of the Leased Space. Upon any surrender of the Leased Space, the Lessee shall redeliver the Leased Space to the Lessor in good condition and in a state of repair, ordinary wear and tear excepted.
- (b) Subject to Lessor's prior written approval, Lessee may install such equipment and business and trade fixtures, as it deems necessary, and such items shall remain the property of Lessee and shall be removed by Lessee prior to the termination of this Lease. Lessee shall repair any damage occasioned by said removal. If Lessor consents in writing, upon the termination of this Lease, Lessee may leave any equipment and business and trade fixtures in the Leased Space and such equipment and business and trade fixtures will become the property of the Lessor.

(c) Unless otherwise provided herein, Lessor shall keep and maintain in good condition and repair, the roof, elevators, exterior walls, plumbing, HVAC system, pipes and conduits, and other systems located outside the Leased Space that serve the Leased Space (excluding those systems where such obligation is the duty of a utility provider). Lessor shall not be required to repair any damage caused by the negligence or the willful misconduct of the Lessee.

(d) The parties agree to share equally the costs of installing a key-card security system to control the locks to the exterior entrances to the Structure that serve the Leased Space, which installation shall be completed by Lessee. The design and configuration of the key-card system shall require Lessor's prior written consent, which consent shall not unreasonably be withheld. Lessee shall bear the costs of purchasing the key-cards and shall deliver one to Lessor for Lessor's use. Lessee shall be responsible for the administration of the key cards with respect to the employees of Lessee. After the termination of the Lease, assuming that Lessee does not purchase the Structure or that portion of the Structure containing the Leased Space, then the key-card security system shall become the sole property of Lessor. However, if Lessee purchases the Structure or that portion of the Structure containing the Leased Space, then the key-card security system shall become the sole property of Lessee.

**11. Mechanics' Liens.** Lessee shall not permit any liens to stand against the Leased Space for any labor or materials furnished to Lessee in connection with alterations performed on the Leased Space. Lessee shall not be the agent of Lessor with respect to such liens, and no such liens shall attach to or affect the interest of Lessor.

**12. Cleaning Services.** Lessee agrees to provide its own janitorial and cleaning services to the Leased Space.

**13. Trash Removal.** All trash shall be contained within the Leased Space or in a container furnished in a location provided by Lessor. Lessee shall keep the Leased Space free from filth, danger, or fire or any nuisance, and shall comply with all City ordinances, State laws, and regulations applicable thereto. All costs related to the removal of its own trash shall be borne by Lessee.

**14. Common Areas Maintenance.** For the purposes of this Lease, "Common Areas" refers to any areas that are now or hereafter made available for the general use, convenience, and benefit of Lessee and other persons entitled to occupy the Structure, excluding any common areas in the Marriott Spring Hill Suites Hotel, or any successors to that space. Lessee and its employees and invitees are, except as otherwise provided herein, authorized and privileged to use the Common Areas

in common with other persons during the Term of this Lease. Lessor agrees to maintain and operate or cause to be maintained and operated said Common Areas at all times for the use, convenience, and benefit of Lessee, its patrons, and other tenants, owners, and occupants of the Structure. Lessor shall keep or cause to be kept said Common Areas in a neat, clean, and orderly condition, properly lighted and landscaped, and shall repair damage thereto. (The Common Areas are shown on Exhibit A.)

**15. Insurance.**

- (a) As a municipal corporation, Lessee is self-insured for General Liability in accordance with Kansas law. Consequently, Lessee shall not be required to purchase insurance as a condition of this Lease.
- (b) The parties agree that, so long as Lessee's use of the Leased Space does nothing that would cause the premium of Lessor's insurance on the Structure, or its contents, to increase over and above the current rate obtained for the proper use of the Leased Space, or that would otherwise cancel or void any such policy of insurance, Lessee shall not be responsible for sharing in the costs of insuring the Structure or any portion thereof. If Lessee's use of the Leased Space or storage causes the premium of Lessor's insurance on the Structure to increase, then Lessee shall be responsible for paying the difference between the former premium and the increased premium.

**16. Indemnity.**

- (a) During the time that this Lease Agreement is in effect, Lessor agrees to indemnify, defend, save, and hold harmless Lessee, its officers, commissioners, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to Lessor's use of the Structure outside of the Leased Space or any portion thereof or the maintenance thereof, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by Lessee's own negligent, reckless, or willful actions, or that of its agents.
- (b) During the time that this Lease Agreement is in effect, the Lessee agrees to indemnify, defend, save, and hold harmless Lessor, its officers, trustees, agents, employees, grantees, and assigns, from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise out of, or are in any way related to Lessee's use of the leased space or any portion thereof or the maintenance

thereof, on account of any injury to persons or damage to property. This indemnification clause shall not apply to any injury or damage caused by Lessor's own negligent, reckless, or willful actions, or that of its agents.

**17. Damage to or Destruction of Leased Space.**

- (a)** If the Leased Space should be damaged or destroyed during the term of this Lease, by fire or other insurable casualty, without the fault or negligence of Lessee, Lessor shall, subject to the time that elapses due to adjustment of insurance, repair and/or restore the same at substantially the condition it was in immediately prior to such damage or destruction, except as otherwise provided herein. Lessor shall not be required to replace or restore any trade fixtures, signs, personal property, or other installations theretofore installed by the Lessee; those items are the responsibility of Lessee. Lessor shall be required to replace tenant finish if the loss is covered by the Lessor's property or casualty insurance. Rent payable under this Lease shall be abated proportionately according to the floor area of the Leased Space which is useable by Lessee. If the damage was caused by the fault or negligence of Lessee, then there shall be no abatement of rent. Any abatement shall continue for the period commencing with such damage or destruction and ending with the completion by the Lessor of such work or repair or reconstruction as Lessor may be obligated.
- (b)** Notwithstanding the foregoing, in the event that any such fire or other casualty causes damage to the extent that the Leased Space and the Structure are uninhabitable and the repair or restoration of the Leased Space and Structure is not economically feasible, Lessor shall have the option to terminate this Lease by giving written notice thereof to Lessee within sixty (60) days after the occurrence of such fire or other casualty, and thereupon this Lease shall be deemed to have terminated as of the date of the fire or other casualty, and Lessee shall immediately quit and surrender the Leased Space to Lessor. Lessor shall refund to Lessee, on a *pro rata* basis, any Rent paid after the date of the fire or other casualty event.

- 18. Signs.** Any sign attached to the Leased Space must be approved, in writing, by Lessor before the same can be installed. However, consent will not be unreasonably withheld if such sign does not impair the Structure, complies with the City Code, and is not considered either offensive or inappropriate in the sole discretion of the Lessor. Lessor shall have the sole right of approval for any sign proposed to be installed on the Structure.

19. **Default.** If either Lessee or Lessor fails to perform or observe any material term, covenant, provision, or condition of this Lease, then that party will be in default under this Lease. In the case of default, the other party shall send to the party in default a written Notice of Default, setting forth, with particularity, the nature of the complained of default.
20. **Right to Cure.** From the date of written Notice of Default from Lessor for the failure to pay rent, Lessee shall have five (5) days to cure the default; provided, however, that Lessor shall only be required to provide such five-day notice and opportunity to cure twice in any calendar year, after which event, Lessee shall not have any period to cure. In all other cases, from the date of the written Notice of Default, the party in default shall have thirty (30) days to cure any default.
21. **Failure to Cure.** If the party in default fails to cure the default in the time prescribed above -- or if Lessee defaults regarding the payment of Rent more than twice in any Contract Year -- then the other party shall have the right, by giving written notice, to terminate this Lease and may, at its discretion, pursue any other remedies described in this Lease or that may be available to it at law or in equity and which are not otherwise proscribed by the terms of this Lease. If Lessor terminates this Lease for Lessee's failure to cure, then Lessor shall retain any Rent that Lessee has paid that month. If Lessee terminates this Lease for Lessor's failure to cure a default, Lessee shall be entitled to a refund from Lessor all Rent paid after the date of default.
22. **Termination and Removal of Lessee's Property.** Upon the expiration or termination of this Lease, Lessee shall quit and surrender the Leased Space to Lessor. All improvements constructed by Lessee shall be and become part of the property of Lessor, except equipment and business and trade fixtures installed by Lessee in accordance with Section 10, *supra*, that are not so affixed to the Leased Space as to damage the Leased Space upon removal.
23. **Option to Purchase.**
  - (a) Notwithstanding the provisions set forth at Section 2.5 of the August 11, 2000, Amended and Restated Ground Lease, as amended, between the parties, Lessee shall have the option, exercisable by giving written notice to Lessor, at any time during the Term of this Lease, of its intent to purchase the Structure or the entire west side of the Structure, as depicted on Exhibit B, which document is affixed hereto and is incorporated herein by reference ("the West Side of the Structure"). If, during the Term of the Lease, Lessor sells the east side of the Structure, then this Option to Purchase shall be limited only to the West Side of the Structure.

- (b)** If the Lessee exercises its option, the purchase price for the Structure or the West Side of the Structure shall be its fair market value, to be determined as set forth below in accordance with the Uniform Standards of Professional Appraisal Practice. To determine the fair market value, each party shall designate an appraiser, who shall be a member of the Appraisal Institute (or any successor thereto or other comparable entity) and shall have been actively engaged in the appraisal of commercial real estate in the vicinity of the Structure for a period of not less than five years immediately preceding his or her appointment. If the two appraisers agree as to the fair market value of the Structure or the West Side of the Structure, then that valuation will be the purchase price. If the two appraisers cannot agree as to the fair market value of the Structure or the West Side of the Structure, then the parties may: **(i)** negotiate a purchase price that is a compromise of the two appraised values and that shall be deemed the fair market value of the Structure or the West Side of the Structure; **(ii)** agree to hire a third appraiser, after which time the lowest and highest appraisals will be rejected and the middle appraisal shall be the fair market value; or **(iii)** cancel or rescind the exercise of the option, after which the Lease will continue to be in full force and effect (and for Lessee to re-exercise this option, the process must be recommenced). Each party shall pay for its own appraiser and shall share equally the cost of any third appraiser.
- (c)** If Lessee exercises its option and the parties reach an agreement as to the fair market value of the Structure or the West Side of the Structure, then the parties agree to negotiate the terms of closing. The purchase price shall be paid in cash or with a certified or bank check at closing.
- (d)** At closing, Lessor shall, upon receipt of the purchase price, deliver a bill of sale, in recordable form, so as to transfer to Lessee all of Lessor's right, title, and interest in and to the Structure or the West Side of the Structure, free and clear of all liens and charges, except for any taxes relating to the Structure or the West Side of the Structure assessed with respect to the year in which closing shall occur. Lessor shall be responsible for such taxes and other assessments through the date of closing and Lessee shall be responsible for such taxes and other assessments from and after the date of closing.
- (e)** If Lessor is unable to transfer marketable title, without any fault of Lessor, then Lessee shall have the right **(i)** to accept such title as Lessor is able to transfer or **(ii)** reject such title. If title is rejected, then Lessee's exercise of the option is rescinded and this Lease will continue in full force and effect.
- (f)** Upon closing, this Lease will terminate and all Rent, impositions, or other charges shall be prorated as of the date of closing.

- 24. Right of First Refusal Option.** Lessor may, at any time during the Term of this Lease, sell, transfer, or convey: (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, in accordance herewith, but, so long as the Lease is in effect, Lessor shall not sell, transfer, or convey its interest in (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, unless Lessor first offers the same to Lessee in accordance with this Section, subject to the following:
- (a)** If Lessor receives from a third party a *bona fide* offer for that third party to purchase (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, and such offer is acceptable to Lessor, then Lessor shall promptly give Lessee written notice thereof, together with a true copy of the third-party offer.
  - (b)** Lessee shall then have the irrevocable right to elect to purchase (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, as applicable, at the same price and upon the same terms and conditions contained in the third-party offer within forty-five (45) days after receipt of said notice and copy of the third-party offer.
  - (c)** If Lessee accepts the terms of the third-party offer within forty-five (45) days of the receipt of the notice, Lessor and Lessee shall enter into a formal agreement for the sale by Lessor and the purchase by Lessee of (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, as applicable.
  - (d)** If Lessee does not give notice of its acceptance of the third-party terms within the forty-five-day period, Lessor may, for a period of six months after the expiration of the forty-five-day period, proceed with the sale of (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, as applicable, to the third party, but only upon the terms and conditions contained in the third-party offer, or upon terms that are more disadvantageous to the third party from those contained in the third-party offer. Lessor shall not sell, transfer, or convey (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, to any party other than the third party during the six-month period. If, at the end of the six-month period, Lessor shall not have sold, transferred or conveyed (i) the Structure, (ii) the West Side of the Structure, or (iii) any part of the West Side of the Structure, to the third party, then Lessor's right to sell the West Side of the Structure, or any part of the West Side of the Structure, shall again be subject to the provisions of this Section with the same effect as if the third-party offer had not been made.

- (e) Any sale, transfer, or conveyance to a third party shall include an assumption of this Lease and any subsequent sale, transfer, or conveyance shall continue to be subject to the provisions of this Section.
- (f) The provisions of this Section shall not apply to any taking by exercise of the right of eminent domain or any conveyance to a taking authorized in lieu thereof.

**25. Force Majeure.**

- (a) A "*Force Majeure* Event" is any event or cause beyond the reasonable control of the party claiming relief, including any action by or omission of a governmental agency (not the Lessee) or authority, material shortages, third-party labor disputes, epidemic, war, riot, civil disturbance, act of public enemy or enemies, terrorist act, sabotage, any act of God, or any damage as a result of fire, floods, earthquakes, lightning, or other casualty.
- (b) Neither Lessor nor Lessee will be considered in default under this Lease if such party's performance is delayed by virtue of a *Force Majeure* Event. Upon the occurrence of such event, the parties agree to confer in good faith and to agree upon an equitable, reasonable action to continue performance under this Lease, provided, however, that the Rent payable by Lessee to Lessor shall abate for any period during which Lessee's use of the leased space is limited as a result of a *Force Majeure* Event. The Lessor and Lessee will use reasonable efforts to minimize the delay caused by any *Force Majeure* Event and to resume affected performance when reasonably possible. Lessor will be solely responsible for all repairs and reconstruction -- which repairs and reconstruction will be at its discretion -- of the Structure, including the Leased Space, following a *Force Majeure* Event.
- (c) In the event that a *Force Majeure* Event prevents either party from performing under the Lease for a period of one hundred eighty (180) days, then either party, upon written notice to the other, may terminate this Lease. In such event, Lessor shall pay to Lessee a pro-rated share of any Rent paid by Lessee for the month in which the *Force Majeure* Event occurred. Upon such termination and the refund of any Rent, if any, all parties will be relieved of performance under this Lease, except that a party will continue to be liable for any breaches that occurred and were not cured prior to termination.

**26. Quiet Possession.** Lessor covenants that Lessee, on paying the Rent and performing its obligations hereunder, shall and may peaceably and quietly have, hold, and enjoy the Leased Space during the term of this Lease, free from any

disturbance by Lessor, its agents or employees, or others acting within the control of Lessor.

- 27. Relationship of the Parties.** Nothing set forth herein shall be deemed or construed by the parties, nor by any third party, as creating the relationship of principal and agent, partnership, or joint venture between the parties hereto; it being understood and agreed that neither the method of computation of Rent, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of Lessor and Lessee.
- 28. Toxic or Hazardous Materials.** Lessee shall not store, use, or dispose of any toxic or hazardous materials in, on, or about the Leased Space without the prior written consent of Lessor. Lessee, at its sole cost, will comply will all laws relating to Lessee's storage, use, and disposal of toxic or hazardous materials. Lessee shall be solely responsible for and will defend, indemnify, and hold Lessor, its agents, and employees, harmless from and against all claims, costs, and liabilities, including attorney's fees and costs, arising out of or in connection with the removal, clean-up, and restoration work and materials necessary to return the Leased Space and any other property of whatever nature located on the Leased Space to their condition existing prior to the appearance of toxic or hazardous materials on the Leased Space. Lessee's obligations hereunder shall survive the termination of this Lease.
- 29. Subordination, Non-disturbance, and Attornment.**
- (a) This Lease shall be subject and subordinate in law and equity to any existing or future mortgage placed by Lessor or any successor upon the Leased Space or the Structure.
- (b) So long as Lessee is not in default, beyond the applicable cure periods under any of the terms, provisions, agreements, covenants, or obligations of the Lease, (i) the Lessor or any purchaser, encumbrancer, or assignee of the Leased Space shall not name or join Lessee as a defendant in any exercise of the purchaser's, encumbrancer's, or assignee's rights and remedies arising upon Lessor's or any successor's default of any existing or future mortgage, unless applicable law requires Lessee to be made a party thereto, and (ii) Lessee's possession of the Leased Space under this Lease shall not be disturbed or interfered with by Lessor or any existing or future purchaser, encumbrancer, or assignee of the Leased Space, Structure, or business of Lessor.

(c) Lessee shall attorn to any successor of Lessor upon request and agrees to execute any documents reasonably necessary or appropriate to effectuate such attornment, or the subordination aforesaid, upon written notice thereof.

**30. Estoppel Certificates.** Lessee shall, at any time upon not less than twenty (20) days' prior written notice from Lessor, execute, acknowledge, and deliver to Lessor or to any lender of or purchaser from Lessor, a statement in writing certifying whether or not this Lease is unmodified, whether or not this Lease is in full force and effect, whether or not there are any uncured defaults on the part of the Lessor, and when Rent is due and owing. Any such statements made by Lessee can be conclusively relied upon by any prospective purchaser or encumbrancer of the Leased Space, Structure, or the business of Lessor.

**31. Waiver of Subrogation.** Lessee hereby waives any and all rights of subrogation against Lessor, its agents, servants, and employees, for any damage caused to the property of Lessee located in and upon the Leased Space, by reason of Lessee's negligence, the same as though Lessee insured its property by a standard form policy of fire and extended coverage insurance, rather than being a self-insurer of its property. Lessor hereby waives any and all rights of subrogation against Lessee, its officials, officers, agents, servants, and employees, for any damage caused to the property of Lessor, including the Leased Space, the Structure, and that property located in the Structure, by reason of Lessor's negligence, and said Lessor shall cause said waiver of subrogation rights to be endorsed upon the policy or policies of standard form fire and extended coverage insurance written to insure the Lessor's said property, unless said policy(ies) do not require such endorsement.

**32. Limitation of Liability.**

(a) Neither party shall be liable to the other for lost profits or special, incidental, collateral, punitive, exemplary, or consequential damages, including but not limited to frustration of economic or business expectations, loss of profits, loss of capital, cost of substitute product(s), facilities, or services, or down time costs, even if advised of the possibility of such damages. Further, the liability of one party to the other for damages under this Lease Agreement, excluding liabilities relating to a party's indemnification obligations as set forth in Section 17, *supra*, or any other damages permitted under this Lease, is limited to the total amount payable by Lessee to Lessor under this Lease to which the dispute relates.

(b) Lessor shall not be liable to Lessee or those claiming by, through, or under Lessee, for any loss or damage occasioned by the acts, omission, or negligence of the legal occupants of the Structure outside the Leased Space or for any loss or damage resulting to Lessee or those claiming by, through, or under Lessee, to its property from the bursting, stoppage, leaking or overflowing of water, gas, sewer, or steam pipes, or any of its related costs; provided, however, that Lessor shall be responsible for any loss or damage to Lessee caused by Lessor's intentional acts, omissions, or negligence.

**33. Kansas Cash Basis Law.** The parties understand and recognize that Lessee is a municipality and subject to the provisions of the Kansas Cash Basis Law of 1933, codified as amended K.S.A. 10-1101, *et seq.* The parties understand and agree that Lessee is obligated only to pay monthly installments under the Lease as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's current budget year or from funds made available from any lawfully-operated revenue-producing source.

**34. Holding Over.** Should Lessee hold over for any reason after the expiration of the Term, said holding over shall create only a month-to-month tenancy, terminable on thirty (30) days' written notice from either party to the other. Rent during any Hold-over term shall be 120% of the Rent that was due and payable during the last month immediately preceding the expiration or termination of the Lease.

**35. Assignment.**

(a) Lessee shall not assign, transfer, or encumber this Lease and shall not sublease the Leased Space or any part thereof or allow any other person to be in possession thereof without the prior written consent of Lessor, which consent shall not unreasonably be withheld.

(b) Notwithstanding any permitted assignment or subletting, Lessee shall, at all times during the Term of this Lease, be responsible and liable for the payment of Rent as herein specified and for compliance with all of its other obligations under the terms and provisions of this Lease.

**36. Authorization.** Each of the persons executing this Lease, in behalf of the respective parties, represents and warrants that he or she has the authority to bind the party in behalf of whom he or she has executed this Lease, and that all acts required and necessary for authorization to enter into and to execute this Lease Agreement have been completed.

37. **Notice.** Notice under this Lease shall be provided in writing to the parties at the following addresses:

(a) Notice to Lessor:  
Riverfront, L.L.C.  
Attn: Dan Simons, Manager  
P.O. Box 1597  
Lawrence, Kansas 66044

(b) Notice to the Lessee:  
City of Lawrence, Kansas  
City Manager's Office  
6 East 6th Street  
P.O. Box 768  
Lawrence, Kansas 66044

38. **Successors and Assigns.** This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, personal representatives, successors, and assigns.

39. **Non-waiver.** Failure of either party to insist on strict performance of any of the conditions, covenants, terms, or provisions of this Lease or to exercise any of its rights hereunder shall not waive such rights, but the party shall have the right to enforce such rights at any time and to take such action as might be lawful or authorized hereunder, whether in law or equity.

40. **Governmental Powers.** It is agreed that, by executing this Lease, Lessee does not waive or surrender any of its governmental powers or authority.

41. **Severability.** If any section, sentence, clause, or phrase of this Lease is found to be invalid by any court of competent jurisdiction, it shall not affect the validity of any remaining provision of this Lease Agreement.

42. **Venue.** The parties agree that the appropriate venues for any legal actions arising out of this Agreement are the District Court of Douglas County, Kansas, or, if federal jurisdiction exists, the United States District Court for the District of Kansas.

43. **Governing Law.** This Lease shall be governed by the laws of the State of Kansas.

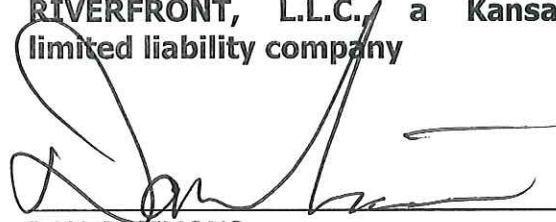
**44. Miscellaneous.**

- (a)** This Lease supersedes all prior discussions and negotiations and contains all agreements and understandings between the Lessor and Lessee with respect to the subject matter hereof. This Lease may only be amended by a writing signed by all parties.
- (b)** The provisions of the Lease relating to indemnification shall survive any termination or expiration of this Lease. Any provision of this Lease that would require performance subsequent to the termination or expiration of this Lease shall likewise survive any such termination or expiration.
- (c)** This Lease may be executed in duplicate counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one (1) or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument.
- (d)** The recitals are incorporated herein by reference as if set forth herein in full.

*[SIGNATURE PAGES FOLLOW]*

**IN WITNESS WHEREOF**, the undersigned have caused this Lease Agreement to be executed as of the date noted above.

**LESSOR:**  
**RIVERFRONT, L.L.C., a Kansas**  
**limited liability company**



DAN C. SIMONS  
Manager

**ACKNOWLEDGMENT**

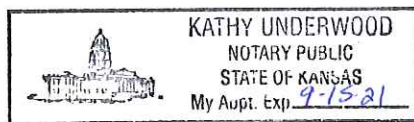
THE STATE OF KANSAS            )  
  )     ss:  
THE COUNTY OF DOUGLAS        )

**BE IT REMEMBERED**, that on this 9<sup>th</sup> day of March, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Dan C. Simons, as a Manager of Riverfront, L.L.C., a Kansas limited liability company, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

Kathy Underwood  
Notary Public

My Appointment Expires: 9-15-21



**LESSEE:**  
**CITY OF LAWRENCE, KANSAS, a**  
**municipal corporation**

\_\_\_\_\_  
THOMAS M. MARKUS  
City Manager

**ACKNOWLEDGMENT**

THE STATE OF KANSAS            )  
  )  
THE COUNTY OF DOUGLAS        )        ss:

**BE IT REMEMBERED**, that on this \_\_\_\_ day of March, 2018, before me the undersigned, a notary public in and for the County and State aforesaid, came Thomas M. Markus, as City Manager of the City of Lawrence, Kansas, who is personally known to me to be the same person who executed this instrument in writing, and said person fully acknowledged this instrument to be the act and deed of the aforementioned entity.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my notarial seal, the day and year last written above.

\_\_\_\_\_  
Notary Public

My Appointment Expires: